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10/034,396	12/28/2001	Chester F. Grochoski		1149

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EXAMINER

SIMONE, CATHERINE A

ART UNIT PAPER NUMBER

1772

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,396

Applicant(s)

GROCHOSKI, CHESTER F.

Examiner

Catherine Simone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-14 and 22-30 is/are pending in the application.
- 4a) Of the above claim(s) 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-14 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/20/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Withdrawn Rejections

1. The 35 U.S.C. 103 rejection of claims 1, 3-8, 10-17 and 19-26 over Handwerker in view of Olson of record in the Office Action mailed 3/31/04, Pages 2-4, Paragraph #3 has been withdrawn due to the Applicant's amendment filed 6/21/04.

Election/Restrictions

2. Newly submitted claims 27-30 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Invention I, claims 1, 3-8, 10-14 and 22-26, and Invention II, claims 27-30, are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed in Invention I can be made by another and materially different process without the steps of the Group II process i.e. pouring concrete, applying supplementary heat etc.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-30 stand withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

3. The amendment filed 6/21/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The recitations “an insulated system”, “curing concrete having an exposed surface”, “directly facing the exposed surface of the curing concrete”, “directly facing the concrete when said blanket is placed over the curing concrete” and “directly facing the curing concrete when said blanket is placed over the curing concrete” are deemed new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 3-8, 10-14 and 22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitations “an insulated system”, “curing concrete having an exposed surface” and “directly facing the exposed surface of the curing concrete” in claim 1 and “directly facing the concrete when said blanket is placed over the curing concrete” in claim 8 and “directly facing the curing concrete when said blanket is placed over the curing concrete” in

claim 22 are deemed new matter. The specification, as originally filed, does not provide support for the invention as in now claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1, 3-8, 10-14 and 22-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over Handwerker (US 5,855,978).

Regarding **claims 1, 8 and 22**, Handwerker discloses curing concrete having an exposed surface (Fig. 3, #20), a concrete curing blanket comprising a first moisture-barrier layer having first and second sides (Fig. 3, #34); a second moisture-barrier layer (Fig. 3, #26); an insulative layer (Fig. 3, #16) between the first moisture-barrier layer and the second moisture-barrier layer, the first side of the first moisture-barrier layer (Fig. 3, #32) facing the insulative layer (Fig. 3, #16); and a metal foil having first and second sides (Fig. 3, #36), the first side of the metal foil (Fig. 3, #36) attached to the second side of the first moisture barrier layer (Fig. 3, #34), whereby the insulative layer (Fig. 3, #16) and the metal foil (Fig. 3, #36) are on opposite sides of the first moisture-barrier layer (Fig. 3, #34). However, Handwerker fails to disclose the metal foil being exposed to form an external lower surface of the blanket directly facing the exposed surface of the curing concrete. Handwerker teaches a clear polyethylene coating (Fig. 3, #38) applied to the underside of the metal foil. Therefore, the clear polyethylene coating, not the metal foil, is

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directly facing the exposed surface of the curing concrete. However, Handwerker discloses that the clear polyethylene coating is only applied to protect the metal foil from dirt and harmful chemicals in the concrete (see col. 7, lines 1-12 and col. 8, lines 27-32). It has been held that a prior art reference that “teaches away” from the claimed invention is a significant factor to be considered in determining obviousness; however, “the nature of the teaching is highly relevant and must be weighed in substance. A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use.” *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). See MPEP 2145 X D1.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant’s invention was made to have modified the concrete curing blanket in Handwerker to have the second side of the metal foil exposed to form an external lower surface of the blanket directly facing the exposed surface of the curing concrete, since it has been held that “the nature of the teaching is highly relevant and must be weighed in substance and a known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use.” *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

Regarding **claims 3 and 10**, note the metal foil is aluminum (see col. 6, line 55).

Regarding **claims 4 and 23**, the insulative layer comprises a sheet, the sheet defining a plurality of indentations having a base and an apex (Fig. 3, #16), the first moisture-barrier layer (Fig. 3, #34) laminated to one of the base and the apex, the second moisture-barrier layer (Fig. 3, #26) laminated to the other of the base and the apex, the first moisture-barrier layer and the second

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moisture-barrier layer defining a space therebetween (Fig. 3, #30). Regarding **claim 5**, the insulative layer (Fig. 7, #16) comprises a first sheet defining a plurality of indentations (Fig. 7, #30), the first sheet laminated to a second sheet (Fig. 7, #108) closing the plurality of indentations, the enclosed indentations forming at least one insulative enclosure (Fig. 7, #18). Regarding **claim 6 and 26**, the insulative layer (Fig. 7, #16) comprises a first sheet defining a plurality of indentations (Fig. 7, #30), the first sheet laminated to a second sheet (Fig. 7, #108), the laminated first sheet and the second sheet defining a first enclosed space (Fig. 7, #18), the first sheet laminated to a third sheet (Fig. 6, #16), the laminated first sheet and the third sheet defining a plurality of insulative enclosures (Fig. 6, #18). Regarding **claims 7, 13 and 14**, the insulative layer and moisture-barrier layers are plastic (see col. 5, lines 35-37 and col. 6, lines 12-13 and lines 46-49). Regarding **claim 11**, note the moisture-impervious layer and the insulative layer comprise degradable materials (see col. 5, lines 35-37 and col. 6, lines 12-13 and lines 46-49). Regarding **claim 12**, note a second moisture-impervious layer (Fig. 3, #26) secured to the protrusions (Fig. 3, #18), the moisture-impervious layer and the base forming at least one insulative enclosure. Regarding **claim 24**, note the reflective layer (Fig. 3, #36) is attached to the base (Fig. 3, #16). Regarding **claim 25**, the reflective layer (Fig. 3, #36) is attached to the moisture-impervious layer (Fig. 3, #34).

Response to Arguments

4. Applicant's arguments with respect to claims 1, 3-8, 10-14 and 22-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

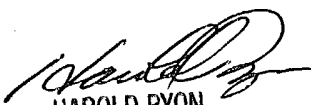
CAS

Catherine Simone

Examiner

Art Unit 1772

July 28, 2004


HAROLD PYON
SUPERVISORY PATENT EXAMINER

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7/29/04